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law rule wherever possible. But, on the other hand, it has been held, in accord with the principal case, that this presumption no longer holds at all. *State v. Seahorn* (1914) 166 N. C. 373, 81 S. E. 687; *State v. Hendricks* (1884) 32 Kan. 559, 4 Pac. 1050. It is suggested that this liberal view is sound and in accord with the *mores* of the times.

INTERSTATE COMMERCE—LIMITATION OF LIABILITY—PASSENGER RIDING ON PASS.—The plaintiff sued for damages resulting from injuries received while riding in the defendant's train. He had an employee's pass thereon from Toledo to Cleveland, which limited the defendant's "liability" for negligence. Desiring to go to Pittsburgh, he obtained a pass by way of Ashtabula to Youngstown, and the promise of a pass from Youngstown to Pittsburgh. But to save time, he used his own pass from Toledo to Cleveland, intending to pay his way on the Erie railroad from Cleveland to Youngstown, there get the promised pass, and go on to Pittsburgh. He was injured *en route* from Toledo to Cleveland. The plaintiff contended that he was an interstate passenger and that the limitation of "liability" in the pass was inoperative by federal law. *Held,* that he should recover, because the defendant was wantonly negligent, with a dictum that he was not an interstate passenger. *New York Central R. R. Co. v. Mohney* (1920) 40 Sup. Ct. 287.

Mere intent to export or leave the state does not place an article or person in interstate commerce. *United States v. Knight Co.* (1894) 156 U. S. 1, 15 Sup. Ct. 249. Actual motion in transportation seems to be essential. *Bennett v. American Express Co.* (1891) 83 Me. 236, 22 Atl. 159. Transportation to a mere *entre-pot,* where the owner still retains control, is not enough. *Cf. Coe v. Errol* (1885) 116 U. S. 517, 6 Sup. Ct. 475; *contra, cf. Texas & New Orleans R. R. Co. v. Sabine Tram Co.* (1901) 227 U. S. 111, 33 Sup. Ct. 229. The original strict rule required a consignment to a carrier for a final or continuous movement. *Coe v. Errol, supra; cf.* (1919) 28 YALE LAW JOURNAL, 528 ff. But it was early decided that the fact that several independent carriers engaged in the transportation was irrelevant. *The Daniel Ball* (1870, U. S.) 10 Wall. 557; see *New York ex rel. Pa. Ry. v. Knight* (1904) 192 U. S. 21, 27, 24 Sup. Ct. 202, 204. And a delay in transit does not necessarily operate to remove the interstate character. *State v. San Antonio R.* (1903) 32 Tex. Civ. App. 58, 73 S. W. 572; *cf. Merchant's Transfer Co. v. Board of Review of City of Des Moines* (1905) 128 Iowa, 732, 105 N. W. 211 (unreasonable delay). Some cases have been controlled entirely by the contract of shipment. *Gulf, Colorado & Sante Fe Ry. v. Texas* (1907) 204 U. S. 403, 27 Sup. Ct. 360. Nevertheless, customary use or conduct which seems almost relevant, is disregarded. *Norfolk & Western R. R. v. Commonwealth of Virginia* (1896) 93 Va. 749, 24 S. E. 837. It is submitted that the unconscious test is some motion while ready for final transportation, with an intention to complete an interstate shipment or journey. The courts are gradually recognizing that the actual intent of the shipper or passenger should control. *Cf. Kelley v. Rhoads* (1902) 188 U. S. 1, 23 Sup. Ct. 259; see *Western Union v. Foster* (1918) 247 U. S. 105, 113, 38 Sup. Ct. 438, 439. And any attempt to retain the continuous journey, or final movement, test would be inconsistent with the cases above.

LANDLORD AND TENANT—EMBLEMENTS—PROOF OF CUSTOM.—One Doom rented a farm to the plaintiffs for a term of one year ending January 1, 1918. The plaintiffs planted a part of the farm in cotton, but were unable to pick all the cotton before the expiration of this lease. In February 1918, one of the plaintiffs was still on the place and the defendant, to whom Doom had sold the farm some months before, agreed to allow him a reasonable time for the removal of the cotton still unpicked. The plaintiffs failed to pick the cotton and in March the

defendant entered and picked it himself. The plaintiffs sued for the value of the cotton taken. The lower court instructed the jury that the plaintiffs were entitled to a reasonable time after the expiration of their lease to remove the unpicked cotton. No proof was offered of a custom between landlords and tenants giving tenants this privilege. *Held,* that such instruction was erroneous. *Huckaby v. Walker* (1920, Ark.) 217 S. W. 481.

A tenant for a fixed term of years at common law is not entitled to emblements for the reason that it is the tenant's own folly to sow when he knows that his lease will expire before the time of harvest. *Gossett v. Drydale* (1892) 48 Mo. App. 430; see 2 Tiffany, *Landlord and Tenant* (1912) 1636. But this rule may be modified by the terms of the lease. *Stoddard v. Waters* (1875) 30 Ark. 156. Or the landlord, by conduct misleading to the tenant, may be estopped in equity from claiming the crop. *Carmine v. Bowen* (1906) 104 Md. 198, 64 Atl. 932. Or the rule may be modified by the custom of a particular locality. *Wigglesworth v. Dallison* (1779, K. B.) 1 Doug. 201. However, such a custom does not prevail in opposition to express stipulations in the lease. *Boraston v. Green* (1812, K. B.) 16 East, 71. In some jurisdictions such a custom is recognized as common to the whole state. *Stultz v. Dickey* (1812, Pa.) 5 Binn. 285. Varying customs have led to apparent inconsistencies in the law. *Cf. Templeman v. Biddle* (1835, Del.) 1 Har. 522 (tenant entitled to remove wheat crop, but not a crop of oats). It has been held that a custom cannot be recognized since it must be immemorial and that this is not possible in the United States. *Harris v. Carson* (1836, Va.) 7 Leigh, 632. Some courts put a crop matured and ready for severance in the same class with a crop severed, but not yet removed. *Opperman v. Littlejohn* (1910) 98 Miss. 636, 54 So. 77. According to this view unpicked cotton does not fall within the rules as to emblements, if ripe at expiration of the lease period. Other cases treat the cotton as an emblement as long as unsevered. *Sanders v. Ellington* (1877) 77 N. C. 255. There is a similar conflict in the turpentine cases. *Cf. Lewis v. McNatt* (1871) 65 N. C. 63 ("scrape" belongs to the tenant); *cf. Florala Sawmill Co. v. Parrish* (1908) 155 Ala. 462, 46 So. 461 ("scrape" belongs to the landlord). The principal case follows what appears to be the majority rule in treating matured, unpicked cotton as an emblement, and in saying that it goes to the tenant where a custom has been proved in his favor.

LIMITATION OF ACTIONS—TOLLING STATUTE—JOINT OBLIGORS—PAYMENTS BY PERSONAL REPRESENTATIVES.—The defendant signed a note as surety co-maker for one Aday, who died intestate. A judgment of allowance was rendered in favor of the plaintiff, who held the note, for the amount thereof, and a part payment was made by Aday's administrator. The plaintiff later sued the defendant for the residue, and he pleaded the statute of limitations. The plaintiff contended that the part payment by the administrator had tolled the running of the statute against the defendant. *Held,* that the plaintiff should recover. *Findley v. Shults* (1920, Ark.) 218 S. W. 197.

The early common-law rule was that part payment by one joint obligor tolled the statute for all. *Whitcomb v. Whiting* (1781, K. B.) 2 Doug. 652. This rule has been only slightly modified in England. *Cf. Wyatt v. Hodson* (1832, Eng. C. P.) 8 Bing. 309. But it has been abandoned in all but five of our jurisdictions. See (1912) 37 L. R. A. (N. S.) 272, note. Arkansas is one of those. *Hicks v. Lusk* (1858) 19 Ark. 692. The rule has been defended on the theory of agency, and on the analogy of partnership, both of which are inconsistent with other rules on joint obligors, such as that requiring presentment to *each* on a loose notion that a payment which benefited all should burden all; and for the practical reason that a change in the old rule would be embarrassing. But a failure to change it by statute seems generally the result of oversight. Most